

1 is the one element of community responsiveness of, surveying
2 an ascertainment that was retained as essential in the Court's
3 opinion, for the Commission to be able to make its public
4 interest determination under Section 309 of the Act. In the
5 recent decision for example of, of the, relating to
6 Philadelphia commercial radio stations, a license renewal case
7 involving a petition to deny the licenses of I believe nine or
8 10 Philadelphia stations, 8 FCC Record 6400 (1993), the
9 Commission rejected allegations by various listeners that the
10 stations' programs were not responsive to community needs.
11 The allegations were based largely on these issues programs
12 lists. Now what the Commission did in rejecting these,
13 however, this petition, however, was that it did not say that
14 this type of evidence was irrelevant or could not in this case
15 rise to the level it properly presented of raising a prima
16 facie case requiring hearing on the basis qualifications of
17 the applicant, instead the Commission went on for, for six
18 pages detailing the evidence and reaching the merits of the
19 issues that the petitioners raised.

20 I would submit, Your Honor, that if these, if the
21 Commission considers as it should that the issues programs
22 list are the one principle test that it offers, that it
23 requires stations to hold out to the public and say this is
24 our programming, evaluate us based on this programming, then
25 it's entirely proper for community leaders who may not

1 themselves be consistent viewers of a specialty, especially a
2 specialized format television station, to look at those lists
3 and evaluate whether, whether the list reads, the programming
4 described therein reasonably met the needs with which these
5 viewers, to which these leaders are familiar.

6 JUDGE CHACHKIN: You have opposition?

7 MR. SCHONMAN: Yes, Your Honor. It's my
8 understanding that the programs issues lists are merely
9 representative of what a station provides in its programming
10 and the lists do not provide, or do not constitute the
11 universe of public interest programming. I would submit that
12 it belies logic how an individual who hasn't viewed the
13 station's programming can, can testify on the station's
14 programming. If he doesn't watch the station what knowledge
15 does he have about the programming.

16 JUDGE CHACHKIN: Well I, that's my problem, Mr.
17 Honig. The Commission never stated that the issues programs
18 list is supposed to be definitive as to the station's
19 programs, it's only supposed to be merely representative. So
20 I don't know how on the basis of issues programs list you can
21 draw any conclusions as to the station's responsiveness in
22 particular areas. The only way you could draw conclusions it
23 seems to me is by demonstrating viewership for the station in
24 sufficient detail and kind so that you can reach some kind of
25 conclusion. But the issues programs list is not a basis for

1 drawing conclusions as to the station's programming since
2 they're not required to include every program they carry in
3 the public affairs area in the issues programs list.

4 MR. HONIG: Your Honor, I, this question of the
5 competence of, of viewers and community leaders arose in the
6 First United Church of Christ hearing, and we --

7 JUDGE CHACHKIN: Well first, first of all let's get
8 clear here, we're talking, we're talking about community
9 leaders. In looking at an issues programs list and drawing
10 conclusions you don't have to be a community leader
11 necessarily, you could come in from Washington and have done
12 the same thing that they're doing by going through the issues
13 programs list and classifying those, those issues of
14 responsiveness which fit into different categories. So the
15 fact that they're community leaders who did this, or anyone
16 else on your staff or anyone else that did this it seems to me
17 is irrelevant in terms of reviewing issues programs list.
18 This is not a particular something that the fact you're a
19 community leader gives you any more expertise in reviewing an
20 issues programs list than anyone else out there; for instance
21 a law clerk I assume could do this.

22 MR. HONIG: Your Honor, you're quite correct that in
23 fact the issues programs lists were in fact aggregated by a
24 law clerk, however --

25 JUDGE CHACHKIN: But what have they done? They just

1 added their name to it apparently.

2 MR. HONIG: The evaluation, however, of whether the
3 programming set out as representative and held out as
4 representative, and whether that programming in fact
5 reasonably meets the needs which it is represented as being
6 representative of was based on the experience and expertise of
7 those leaders who address those needs every day themselves.
8 It is the same type of testimony in that sense as, as the
9 viewers, and I would hope, and I would submit is at least if
10 not more useful to the Commission as the subjective
11 perceptions of viewers whose testimony has been admitted --

12 JUDGE CHACKIN: Who has not been admitted.

13 MR. HONIG: -- who have, who have --

14 JUDGE CHACKIN: Mr. Honig, you're wrong, I did not
15 admit that. I did not admit subjective testimony by viewers
16 as to what they thought of the programming. All I admitted
17 was statements of the community leaders or officers of
18 different organizations as to their participation in
19 particular programs only where they had personal knowledge of
20 particular programs and what the station did for them in these
21 specific areas. But when there was an attempt to put in
22 evidence as to what, what their spouses thought of it or what
23 their children thought of it or what they thought generally of
24 a program I have not received that also, I found that to be
25 incompetent since there was no basis that they had viewed

1 | programs in sufficient amounts to, to form an opinion.

2 | MR. HONIG: The difficulty, Your Honor, is that
3 | unless you have that unique viewer who sits and watches a, a
4 | scientific sample of programming or all of the programming,
5 | the 24 hours a day of the programming --

6 | JUDGE CHACHKIN: Well, I would --

7 | MR. HONIG: -- the best you have is a representative
8 | sample, and --

9 | JUDGE CHACHKIN: Well, I, I would disagree, Mr.
10 | Honig. It's been done in other cases that I've been involved
11 | in where programming was taped, just like you make a composite
12 | week. If you want to find out, if you want to make a claim
13 | that the station is not serving the community what you do is
14 | you tape the station's programming over a period of time, a
15 | sample week you establish and then you have a, something to
16 | argue that based on this sample week of programming which
17 | you've taped this is the result. Then it seems to me then you
18 | can make an argument that this is the station's programming
19 | that hasn't met needs. So it can be done --

20 | MR. HONIG: But --

21 | JUDGE CHACHKIN: -- without someone watching
22 | television 24 hours a day, it can be done by, by, as I say,
23 | this process of taping it.

24 | MR. HONIG: But just as, just as the issues programs
25 | lists are a representative sample so would a weeks'

1 programming be a representative --

2 JUDGE CHACHKIN: No, no, no, I think that would be,
3 when you actually have programming the Commission has accepted
4 that as an indicia of the programming. Just like the sample
5 logs are an indicia of the station's programming. I mean,
6 that's a method that's been employed in the past in cases that
7 I'm familiar with in trying to find out about the station's
8 programming and arguing in some fashion about the station's
9 programming.

10 MR. HONIG: Your Honor, as I, if I recall though
11 Trinity itself in, and I'm recalling, I don't have it before
12 me but I think it was Paragraph 53 of, of the Michael Everett
13 declaration relied on these issues programs lists themselves
14 and in fact has put them in evidence as illustrative of what
15 they hold out and what they've done.

16 JUDGE CHACHKIN: Now you're right, illustrative. It
17 doesn't mean, by illustrative it doesn't mean it's definitive,
18 it doesn't mean that it establishes that program. It doesn't
19 mean in other words that you can argue based on their
20 illustrations that this is what the station did or did not do.

21 MR. HONIG: That's right, but if they're permitted
22 to offer it I think we ought to be permitted to try and
23 impeach it as best we can, and we can only impeach it with --

24 JUDGE CHACHKIN: Well --

25 MR. HONIG: -- experts.

1 MR. SCHAUBLE: Your Honor, may I be heard on --

2 JUDGE CHACHKIN: The only way you can impeach it, it
3 seems to me, is argue that based on the ascertainment efforts
4 on the station the, the issues programs list is not responsive
5 to the ascertainment essence. That will be a legitimate basis
6 to, if you wanted to raise it. But if you want to go into
7 actual programming then it seems to me you have to do as I
8 suggested; take the programming over a period of time and then
9 prepare a study based on that taping in which you demonstrate
10 the nature of the programming and whether it met the needs of
11 the community.

12 Yes? Mr. Schauble?

13 MR. SCHAUBLE: Your Honor, I wish to be heard on the
14 issue of the representativeness of the, of the issues programs
15 list.

16 JUDGE CHACHKIN: Yes?

17 MR. SCHAUBLE: If it, I believe the record will
18 reflect that the issues programs list, there was a slight
19 difference in how they were prepared, local versus network
20 programming. I believe the record will reflect that with
21 respect to the network programming that would seem to be
22 responsive to community issues that the station's public
23 affairs director received from the network a list of all the
24 programs that were responsive to these community issues.

25 JUDGE CHACHKIN: Well what, what does this have to

1 do with Mr. Brown's analysis --

2 MR. SCHAUBLE: Your Honor, I'm responding --

3 JUDGE CHACHKIN: -- of the issues programs list?

4 MR. SCHAUBLE: -- to your apparent concern that the
5 issues programs lists are not a sufficient basis on which for
6 Dr. Brown to make a judgement concerning the station's
7 programming.

8 JUDGE CHACHKIN: Well the issues programs list
9 doesn't provide, give you a verbatim account of what took
10 place on each of the programs. You, you don't get that
11 information, all you get is a brief synopsis of what the
12 program was about. But you can't make a determination back
13 that the whole hour of the program didn't deal with some of
14 the subjects that Mr. Brown says were not covered. You don't
15 know from the issues programs list. So what I'm saying is if
16 you want, if you want to attack the programming then you have
17 to tape the programming over a sample period and then you
18 could argue, based on this sampling, this is what the station
19 did or didn't do. But you can't use the issues programs list
20 to determine what the contents of the program were. It's not
21 a, wasn't, the Commission didn't want a verbatim transcript of
22 the contents of the program, they merely want a brief summary
23 of what the programs dealt with.

24 MR. SCHAUBLE: Your Honor, I believe Trinity is
25 offering its issues programs list for the purposes of

1 determining evidence as to what the content of these programs
2 were.

3 JUDGE CHACHKIN: That's not true. They're, they're
4 offering it because the Commission says this is what licensees
5 are supposed to do, are supposed to provide that. Showing
6 that, illustration of the type of programming that they carry,
7 illustration of how they met the needs and that's all it's
8 intended to be. I'm saying if someone wants to attack the
9 programming they have to go beyond the issues programs list
10 and prepare some kind of analysis of the actual programming.
11 You can't attack the issues programs list only on the basis,
12 you could argue that the issues programs list is not
13 responsive to the ascertainment that the station did. Then
14 you could attack it, if you could show that there was
15 ascertainments, the ascertainment revealed that there were
16 needs in various areas and the issues programs list doesn't
17 appear to indicate that those general areas were, weren't any
18 programs directed to those general areas. I presume you could
19 then argue that the station would have to come forward and
20 show how it met the needs ascertained. But as far as
21 individual contents, contents of a program, you can't attack
22 it it seems to me by attacking the issues programs list.

23 That's my dilemma, Mr. Honig. I don't think that
24 this is relevant testimony to attack the station's programming
25 and it's failure to meet needs, and I've indicated to you the

1 manner in which it should have been approached if that was
2 your intention.

3 MR. HONIG: But, Your Honor, I'm not aware of the
4 case in which the Commission has said that community groups
5 have to conduct a scientific survey in order to competently
6 question the programming. I'm referring to the First Church
7 of Christ Hearing on WLBT's license renewal, and in fact one
8 such survey was done but there was also testimony from
9 community leaders who basically said, you know, we haven't
10 necessarily watched a representative sample of the programming
11 but in fact the programming is segregated so we don't find
12 much that we would want to watch, and we don't think that
13 they've met community needs based on the documents that we've
14 seen. The judge rejected all that evidence and the Court
15 reversed --

16 JUDGE CHACHKIN: Well, I don't --

17 MR. HONIG: It was the best they had.

18 JUDGE CHACHKIN: Well I don't think it was as simple
19 as that, I think there was specific areas of concern about
20 discrimination which community leaders had sufficient
21 information about, employment practice and what have you.
22 We're not dealing with that situation here, what we're dealing
23 here with is you're attacking the programming and I'm
24 indicating to you that without any kind of, since Dr. Brown
25 has not watched the station he's not in a position to offer an

1 opinion critical of the station.

2 MR. HONIG: No, he's only offering an opinion of, of
3 whether these lists which have been received in evidence are
4 what they were held out to be, which is representative of
5 programming that's responsive to ascertained needs. And in
6 his opinion in some very specific respects they are not, and
7 these descriptions I should add that Trinity has provided are
8 very expansive, they're lengthy which is frankly very helpful.
9 To Trinity's credit they have laid out in great detail all the
10 subjects discussed in each of these programs, and I think that
11 provides a good basis for critical comment.

12 Your Honor, I, I understand your position on it,
13 I've, although I respectfully disagree I would ask that in
14 order that the parties be permitted to argue the weight of
15 this material --

16 JUDGE CHACHKIN: There is no weight.

17 MR. HONIG: -- and consider the record --

18 JUDGE CHACHKIN: This material has no weight it
19 seems to me. It's not relevant. It's not relevant as I
20 indicated to you. You can't determine, on the basis of the
21 issues programs list the contents of the program. All you can
22 determine there is the nature of the program that was carried,
23 or the intent. And even that is not definitive because the
24 licensee is not required to indicate every program carried or
25 provide a summary of every program he carries. Only is

1 required to present illustrative examples of the types of
2 program it carries in order to meet needs. And I'm saying to
3 you again the manner in which this should have been done, if
4 you wish to attack, challenge a station's programming. This
5 does not do it, the only way this can be used is a basis to
6 argue, which I've said two or three times, that this, these
7 programs, this issues programs list is not responsive to the
8 ascertained needs, but that's not what Dr. Brown is arguing
9 here and I'm going to reject the exhibit as irrelevant.

10 MR. HONIG: May I make a suggestion, Your Honor? I
11 understand your ruling and, and would suggest that there might
12 be a way in which we can save a good deal of time. There are
13 two or three of these exhibits which do contain some testimony
14 which is of a nature similar to that which was admitted
15 previously; for example Dr. Cherry discusses an appearance
16 that he actually had on the station, and Donald Jones
17 describes, Donald Jones is in fact a systematic viewer. What
18 I would like to suggest is that we take about a 10 minute
19 recess so that Trinity's counsel and I could confer and see if
20 we could agree on those portions of the exhibits which contain
21 that type of evidence, and on which we might be able -- and
22 then we would simply not, we would simply offer and accept the
23 rejection of the other exhibits.

24 JUDGE CHACHKIN: Well it's up to Mr. Mullen, as --

25 MR. MULLIN: That's satisfactory. I think it might

1 help. But I, I want to say on the record before we confer,
2 and I'm sure this is a mistake on Mr. Honig's part, I think
3 he's wrong about Donald Jones. He's said several times on the
4 record, and going back to the prehearing conference that Jones
5 was a regular viewer. He's not a regular viewer. In Jones'
6 own words, in S.A.L.A.D. Exhibit 5 for identification page 10,
7 Professor Jones says "Well, I mean, I don't claim to be an
8 expert on the content of what's there, I'm not a professional
9 watcher." As a matter of fact he watches it very little.
10 Maybe Counsel has him confused with somebody else. I am not
11 going to object to the fact in the case of Dr. Andrew Cherry
12 that he did appear on a program but we are going to rely on
13 the cross examination of his description of what happened
14 there.

15 JUDGE CHACHKIN: Well that will also be in evidence.

16 MR. MULLIN: We are indeed going to rely on that. I
17 don't know in the light of this ruling that you have just made
18 with respect to Dr. Bradford Brown where else there is
19 relevant testimony, but I'm certainly willing to confer with
20 counsel if he thinks it might be helpful.

21 JUDGE CHACHKIN: All right, we'll take a 10 minute
22 recess.

23 (Off the record.)

24 (Back on the record.)

25 JUDGE CHACHKIN: Back on the record. Where do we

1 stand, Mr. Honig?

2 MR. HONIG: We're almost through going through them
3 and I think we'll save about, we'll save a lot of time --

4 JUDGE CHACHKIN: All right.

5 MR. HONIG: -- by our offering some with the
6 understanding that they will be rejected.

7 MR. SCHONMAN: Your Honor, might I interject?
8 During our recess I was reviewing the Fox decision by the
9 Review Board of March 10, 1993, and I want to clarify and to
10 some extent correct the Bureau's comments from a moment ago
11 about the significance of the programs issues list. In the
12 Fox decision at page 13 there's a footnote 23, and footnote 23
13 refers to the Commission's commercial TV stations decision, 98
14 FCC 2nd. 1076, and there the Commission stated that in
15 comparative renewal proceedings the programs issues lists, and
16 I quote, "Will serve as a significant source of information
17 for any initial investigation by a member of the public or by
18 the Commission," end quote. And it would appear on further
19 reflection that that language suggests that an individual, a
20 member of the public, can examine the lists and reach some
21 conclusion.

22 JUDGE CHACHKIN: That's not what it says, it says
23 initial point of investigation. In other words if a member of
24 the public examines a list and they're not satisfied then it
25 takes the next step, making an examination of the

1 programming.

2 MR. SCHONMAN: Well my point is that an individual
3 can offer testimony as to their examination of those lists.

4 JUDGE CHACHKIN: I don't think --

5 MR. SCHONMAN: Now --

6 JUDGE CHACHKIN: I don't agree with you. The list
7 is in evidence and one could argue the list shows what it
8 shows, but I don't agree with you that that's what this says.

9 MR. SCHONMAN: Well I merely wanted to offer the
10 Bureau's, Bureau's input on that. Thank you.

11 JUDGE CHACHKIN: Well what is your point? That
12 someone could offer an analysis of the list? In what manner?
13 In what, what --

14 MR. SCHONMAN: That an individual of the public has
15 the capacity to, to analyze the lists and offer his or her
16 opinion as to the lists. Now --

17 JUDGE CHACHKIN: What do you mean by offer his or
18 her opinion as to the lists? What does that mean?

19 MR. SCHONMAN: As to the significance of the lists.
20 As to whether the lists, as to whether the programs that are
21 represented in those lists provide the type of programming
22 that meets the issues that the, that the station has
23 ascertained --

24 JUDGE CHACHKIN: Well that's what I said, I said
25 that. That's the purpose it could be used for, to compare it

1 with the ascertainment efforts. But it's not being used for
2 that purpose by Mr. Brown, by Dr. Brown. Dr. Brown is
3 attempting to, on the basis of the list attempting to, to make
4 a determination about the station's programming in different
5 areas, specific programming in different areas. Extrapolation
6 is what we're engaged in here.

7 MR. SCHONMAN: My point is that I think it's
8 relevant. An individual's testimony about his or her
9 assessment of these lists is relevant. Now it's a question of
10 the weight that should be afforded to that testimony.

11 JUDGE CHACHKIN: That's not what the Commission said
12 if you read that booklet, it said it's a starting point. In
13 other words if a member of the public reviews the list and is
14 dissatisfied by looking at the list that it doesn't appear,
15 illustrative programming doesn't appear to be responsive to
16 the needs of that individual as determined, then he can take
17 the next step and make some examination of the programming.
18 That's what it seems to say there, and --

19 MR. SCHONMAN: Well --

20 JUDGE CHACHKIN: As the starting point for an
21 investigation.

22 MR. SCHONMAN: Your Honor, I don't want to belabor
23 the issue --

24 JUDGE CHACHKIN: Well --

25 MR. SCHONMAN: -- but the fact that a person does

1 not take that additional step and relies solely on the lists
2 does not necessarily make his assessment of those lists
3 irrelevant. It just, it may make it less significant, less,
4 less important in that less weight should be afforded.

5 JUDGE CHACHKIN: You've just indicated to me, I
6 asked you what could you do with those lists and you've just
7 indicated to me those lists compared to the ascertainment, to
8 see if they're responsive to the needs ascertained, and if Dr.
9 Brown had used it in that, for that purpose then we'd have a
10 different question here.

11 MR. HONIG: Your Honor, I believe that's what he
12 was, what Dr. Brown and the other witnesses were trying to do,
13 the, the programming was categorized in the last S.A.L.A.D.
14 exhibits according to the needs that were ascertained, and --

15 JUDGE CHACHKIN: Not by, ascertained by whom?

16 MR. HONIG: By the station. These categories,
17 education schools AIDS and so forth, are categories that the
18 station held out as its needs that it ascertained and that the
19 programming was representative of. And in each case the
20 reason that these, these summaries of the programming were
21 provided to and reviewed by the witnesses was that this was
22 supposed to be all the programming that the station itself
23 held out as responsive to ascertain needs that it had
24 ascertained.

25 JUDGE CHACHKIN: There is nothing in Dr. Brown's

1 declaration which refers at all to any ascertainment of lists
2 prepared by the station.

3 MR. HONIG: Your Honor, on paragraph two --

4 JUDGE CHACHKIN: There is nothing here which makes a
5 comparison of, of the responsive programs, programs issues
6 list to ascertained. If you could show me where there's
7 anything in here which says that I'd like to see it.

8 MR. HONIG: Yes. In paragraph two of Dr. Brown's
9 declaration, S.A.L.A.D. Exhibit 12, he states "I have reviewed
10 Channel 45's issues programs lists for the period of '87 to
11 '91 which covered the subjects of pollution and discrimination
12 issues. Pollution ..." --

13 JUDGE CHACHKIN: And then he goes on to say that
14 none of the programming provided within the area of pollution
15 and, used local community groups to address Dade County's
16 unique environmental concerns. There's no reference at all to
17 any ascertainment.

18 MR. HONIG: But the ascertainment was, we're, we're
19 not contesting whether the needs that were ascertained were
20 the community's needs. We're assuming for the sake of
21 argument that those are, are, are among the community's needs.
22 The question that's being addressed is the next point, which
23 is did the programming respond to those ascertained needs, and
24 that is the subject of Dr. Brown's declaration.

25 JUDGE CHACHKIN: Is --

1 MR. SCHAUBLE: Your Honor, Your Honor, if I can be
2 helpful at all, the first page of each issues programs list
3 that Trinity prepared for each quarter contains the issues
4 which Trinity had ascertained to be the primary issues of
5 community concern during that quarter. So to that extent the
6 issues programs list do contain --

7 JUDGE CHACHKIN: I understand that.

8 MR. SCHAUBLE: -- and is the result of ascertainment
9 information.

10 JUDGE CHACHKIN: I understand that, but all the
11 ascertainment does, the ascertainment listed various problems,
12 various needs, and the issues responsive list is
13 illustratively, is supposed to show that they've responded to
14 these needs and interests. But if you want to make a
15 determination, go beyond that, that say that the contents of
16 the program were not responsive to the needs as Mr. Brown sees
17 it, Dr. Brown sees it, then you have to look at the
18 programming.

19 MR. HONIG: But isn't the answer, Your Honor, that
20 if Dr. Brown, there were few programs concerning the
21 vulnerability of Dade County, the storms and --

22 JUDGE CHACHKIN: How does he know?

23 MR. HONIG: They're -- now what are you saying --

24 JUDGE CHACHKIN: How does he know whether there were
25 few programs if he hasn't reviewed the programming?

1 MR. HONIG: Your Honor, he's stating that in the
2 lists --

3 JUDGE CHACHKIN: The lists are only illustrative. I
4 asked you how does he know that there were few programs
5 without making a study of the programming?

6 MR. HONIG: Your Honor, he does not know that. He
7 only knows that in the issues programs list --

8 JUDGE CHACHKIN: That's irrelevant. The issues
9 programs list is not required to be definitive.

10 MR. HONIG: Your Honor --

11 JUDGE CHACHKIN: It's only supposed to be
12 illustrative.

13 MR. HONIG: Your Honor, Mr. Brown, Dr. Brown was
14 deposed, and if the station had programming that was
15 responsive to this it could have used that programming to
16 impeach him in his deposition, and in fact in a number of
17 cases I believe the station attempted to and succeeded in
18 doing that with some of the witnesses.

19 JUDGE CHACHKIN: Where a witness presumably
20 indicated that he had some knowledge of the programming. Then
21 perhaps there was an attempt to impeach. But how do you
22 impeach somebody that hasn't seen the programming?

23 MR. HONIG: Well for example, and, Counsel, perhaps
24 you can help me, one of the witnesses, Donald Jones I believe,
25 had testified that he did watch the station periodically and

1 he was asked -- forgive me if I'm calling the name of the
2 wrong person -- whether an individual who had appeared in the
3 programming, Larry Kapp, was, was a respected spokesperson,
4 and would he agree that a program on, that included him was
5 responsive to community needs, and the witness had to concede
6 yes, it was. I don't recall whether Dr. Kapp's appearance was
7 among those listed in the issues programs list but it was
8 proper impeachment and it was fair game. So that if you had
9 the declarations and the depositions together those documents
10 provide a picture which is distinct from the evidence offered
11 by Trinity's witnesses of critics of the station. What it's
12 worth, something on which reasonable people can disagree, I
13 would concede that.

14 MR. MULLIN: Can I respond to that particular item?

15 JUDGE CHACHKIN: Yes.

16 MR. MULLIN: Because it indicates the dynamic of
17 these depositions. Dr. Jones, or Professor Jones, is a law
18 professor at the University of Miami School of Law. He
19 testified that he watches the station at least a minimum an
20 hour a month if not an hour a week but I'm not sure and then
21 he volunteered the statement, he was the one that did this, "I
22 don't claim to be an expert on what's there." So Trinity's
23 initial position with respect to Professor Jones is that it's
24 objectionable in its entirety because of his lack of
25 knowledge. However, it did become clear that, you know,

1 | you're down there, you're taking depositions, you take out
2 | some insurance, how do I know whether this objection that I
3 | have in mind is going to be sustained or not, so you cross
4 | examine. On cross examination it turned out he had seen two
5 | programs and he did indeed indicate that those programs did
6 | indeed appear to be responsive.

7 | Now, because that defensive cross examination
8 | happened to make a point then doesn't mean that the objection
9 | to the direct testimony is bad. The objection ought to be
10 | ruled on and then if I'm wrong on my objection then I'm going
11 | to suggest you should receive the deposition for purposes of
12 | cross examination, but I don't want to be hoisted with my own
13 | petard on having asked some questions, not knowing what the
14 | objection was going to be fated to, to, when it came before
15 | you.

16 | JUDGE CHACHKIN: Well that's what I'm going to do,
17 | I'm going to rule on the objections on the direct case, but
18 | part of the offer of proof, cross examination will go forward
19 | as part of the offer of proof, that if these, if this, if --
20 | in other words if the reviewing authority disagrees and
21 | accepts this material then they'll have the cross examination
22 | also.

23 | MR. HONIG: Your Honor, you made the point that
24 | without the, the, even if you are not a Miami viewer you could
25 | look at the issues programs list and write findings based upon

1 them. But there is one aspect of many of these witnesses'
2 testimony that does not rely on the issues programs list but
3 which might, nonetheless, be valuable in assisting in writing
4 findings for that purpose, and that is that many of these
5 witnesses --

6 JUDGE CHACHKIN: Well, look, we're not, we're
7 dealing now with one particular witness. When we get to other
8 declarations you can make your point, we're dealing now with
9 S.A.L.A.D. Exhibit 12. That particular exhibit will be
10 rejected as not relevant.

11 (The document previously marked for
12 identification as S.A.L.A.D. Exhibit
13 12 was rejected.

14 JUDGE CHACHKIN: Let's go on to the next one. Have
15 you reached some kind of consensus as to how you want to
16 proceed, or we'll take each one at a time?

17 MR. HONIG: Well, Your Honor, I thought we had, but
18 this may go a little slower.

19 JUDGE CHACHKIN: All right.

20 MR. HONIG: For example, well, it's not enough to
21 make the point on in, in this exhibit, so that I'll just
22 preserve the objection that I had on, or preserve the, the
23 Exhibit 12 as an offer of proof. S.A.L.A.D. 13 is the
24 declaration of Dr. Andrew Cherry --

25 JUDGE CHACHKIN: Yes?

1 MR. HONIG: -- and he is not a systematic viewer.

2 He does state in the last paragraph on the first page --

3 MR. MULLIN: I do not object to that paragraph.

4 MR. HONIG: Okay.

5 MR. MULLIN: I object to the preceding paragraph.

6 MR. HONIG: I think that, that in Dr. Cherry's
7 declaration that, that the paragraph that begins "I am not a
8 regular viewer of Channel 45," and the paragraph that follows
9 that, "I have reviewed Channel 45 issues programs list," I
10 take it Your Honor would not admit those two paragraphs?

11 JUDGE CHACHKIN: That's correct.

12 MR. HONIG: Okay. The two paragraphs, the three
13 paragraphs following that relates to an appearance by Dr.
14 Cherry on Channel 45 and I would ask that those be received.

15 MR. MULLIN: With respect to the paragraph beginning
16 on page two, the portions of it that are factual and are not
17 conclusary we do not object to, we do object for example to
18 the first two sentences which culminate with the saying "They
19 misrepresented to me what they saw my role to be on their
20 program." That's purely conclusary. He hasn't indicated the
21 facts on which that is based. The sentence on the next line,
22 or next two lines, "In reality I realized that they were
23 setting me up," that's conclusary and that should be objected
24 to as evidence offered with no foundation. I do not object to
25 the sentence beginning "While I tried to highlight," going

1 down through the sentence that says and ends with "...had
2 given a man a job and a place to live," that's factual.
3 Whether it's accurate or not you'll have to look to cross
4 examination to determine. We object to the following
5 sentence, the sentence "The point they were making," that's
6 the very essence of conclusary testimony.

7 I would rather like the last sentence in the
8 paragraph to stay in, he says "I cannot even find my name in
9 the program synopsis," his name is in the program synopsis as
10 he himself conceded on cross examination and I want that to
11 stay in as a commentary on his testimony. We object to the
12 last paragraph that begins in the last two lines on page two,
13 "I have been on other hostile talk shows," that's purely
14 conclusary and the conclusary nature gets more detailed on the
15 next page where he says that Channel 45 has a biased agenda.
16 That's evaluation.

17 To summarize, we don't object to his testimony that
18 purports to be factual about what happened on the program on
19 which he appeared, the rest of it is either conclusary or is
20 incompetent on the grounds on which you've already ruled in
21 the case of S.A.L.A.D. Exhibit 12.

22 JUDGE CHACHKIN: Well I have allowed in conclusions
23 reached by your witnesses as to how they were treated on the
24 program, what the program stood for, as long as they had
25 personal knowledge based on their appearing on the program,